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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,002	03/30/2004	Balram Ghosh	206,487	6062
38137 7590 01/22/2008 ABELMAN, FRAYNE & SCHWAB 666 THIRD AVENUE, 10TH FLOOR NEW YORK, NY 10017			EXAMINER MUMMERT, STEPHANIE KANE	
			ART UNIT 1637	PAPER NUMBER
			MAIL DATE 01/22/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/814,002

Applicant(s)

GHOSH ET AL.

Examiner

Stephanie K. Mummert, Ph.D.

Art Unit

1637

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 105-120.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

*Stephanie K. Mummert*

*Gary Benzion*  
**GARY BENZION**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**

Continuation of 3. NOTE: The amendments to the claims raise new issues of search and consideration. Specifically, the amendment to the claims raise additional issues for consideration under 35 U.S.C. 112, second paragraph. While the cancellation of specific claims and the amendment to claims 105 and 107 to clarify the R1 and R3 allelic variants is appreciated, the terminology of the claims do not clarify the structural limitations of the R1 and R3 allelic variants as requested in the previous office action. Claims 105 and 107 are directed to isolated nucleotide sequences limited specifically to SEQ ID NO:1 (claim 105) and SEQ ID NO:2 (claim 107). While the amendment to the claim has support at paragraph 131 of the PgPub, the amendment describes variant R1 as 5660 nucleotides upstream of the ATG site having SEQ ID NO:1. SEQ ID NO:1 comprises 392 nucleotides in total and so there is no nucleotide within SEQ ID NO:1 that could be 5660 nucleotides upstream of an ATG within the sequence of SEQ ID NO:1. To clarify the specific variant claimed, the variant needs to be described relative to the nucleotides of SEQ ID NO:1 and not using nucleotides that are outside the scope of the claimed sequence.

The same issues arise for the variant of R3 within claim 107. While the amendment has support at paragraph 131 of the PgPub, the amendment describes variant R3 as 3003 nucleotides upstream of the ATG site having SEQ ID NO:2. SEQ ID NO:2 comprises 336 nucleotides in total and so there is no nucleotide within SEQ ID NO:2 that could be 3003 nucleotides upstream of an ATG within the sequence of SEQ ID NO:2. The specific structure and sequence of the variant claimed needs to be clarified relative to SEQ ID NO:2. Furthermore, if the description of the R1 and R3 variants will be established relative to an ATG within SEQ ID NO:1 and 2, the specific ATG sequence should be identified, preferably by the nucleotide in SEQ ID NO:1 or 2 where the sequence is located.